IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1139 OF 1991

Union of India,
Through its General Manager,
Central Railways, Bombay VT
Bombay. : Appellants.

versus

M/s.Diamond & Deccan Dry
Distemper : Respondents.

Mr.A.N.Samant for the appellants.
None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 18th October 2005.

ORAL ORDER

1. Heard the learned counsel Mr.Samant for the Union of India. Even if the respondents are served, nobody is present for them. By this appeal the Union of India has challenged the order of the Railway Claims Tribunal decreeing

the claim of the respondents for damages.

2. Only one submission is made by Mr.Samant and that is about limitation. Issue No.4 in that regard was framed by the Tribunal. But the finding was given against the appellants.

3. In this case, the date of railway receipt i.e. the date of deliver of goods to the railway for carriage is admittedly 13-10-1982. Notice under Section 78B of the Indian Railways Act came to be given on 10th June 1983. Mr.Samant drew my attention to the judgment of this Court reported in **AIR 1985 Bombay 84 (Union of India v. M/s.K.T.Rizvi & Brothers)** wherein, in para 10, this Court has held that "Notice under S.78B of the Railways Act must be served within six months from the date on which the goods were delivered for carriage and starting point of limitation cannot be from the date the goods are delivered to the consignee." This judgment is absolutely clear and squarely applicable to the present case. The date of the railway receipt is 13.10.1982 i.e. the date on which the goods were entrusted to the railways for carriage. Therefore, six months period commences from

13.10.1982. Admittedly, the notice was given beyond six months i.e. 10.6.1983. Therefore, the claim should have been held as time barred. In view of this position, the appeal is required to be allowed. Hence I pass the following order:-

:ORDER:

Appeal is allowed.

The impugned judgement of the Railway Claims Tribunal, Bombay is set aside. The claim petition of the claimants is dismissed with costs through out.

The amount deposited by the railways shall be returned to them.

(D.G.DESHPANDE)